No. 85-1874

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1985

BARTEL DENTAL BOOK CO. INC. and MAPLETON HOUSE BOOKS, INC.,

Petitioners,

v.

PETER J. SCHULTZ, DORMITORY AUTHORITY OF THE STATE OF NEW YORK and EDWARD A. PICHLER, SHERIFF OF THE CITY OF NEW YORK,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENTS SCHULTZ AND DORMITORY AUTHORITY IN OPPOSITION TO PETITION FOR CERTIORARI

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Questions Presented

This case presents no issue worthy of certiorari. It raises no conflict among the circuits or any unsettled questions of law. Rather, this petition is yet another attempt to relitigate issues that were rejected by the New York State courts on five occasions and then rejected in the federal courts below. Every court has rejected petitioners' claims for the simple reason that they do not have a shred of legal or factual support.

Petitioners cannot possibly seek certiorari in good faith. For as *both* the district court and the court of appeals below determined:

—All of the claims brought by petitioner Bartel are flatly barred by a prior settlement agreement and release;

—Petitioner Mapleton's federal claims were actually raised, or could have been raised, during the extensive proceedings in the courts of New York State that preceded the filing of this so-called civil rights action. Applying elementary principles of *res judicata,* therefore, petitioners cannot relitigate under the guise of 42 U.S.C. § 1983 claims that had been rejected repeatedly by the state courts;

—As a matter of law, petitioners clearly have no substantive right to relocation benefits and thus there is no colorable basis to the claim that such a right had been denied in violation of federal due process and equal protection guarantees.

These various grounds led the district court to grant summary judgment to respondents. They also compelled the court to conclude that the bulk of the complaint was frivolous, and that respondents were entitled to an award of partial attorneys' fees under Rule 11, Fed. R. Civ. P.

The Second Circuit, in a unanimous opinion, affirmed each of the district court's findings. Indeed, it identified even further reasons why the complaint was not brought in good faith. It found that the appeal was frivolous as well, and awarded nominal sanctions under Rule 38, Fed. R. App. P.

Under these circumstances, the petition raises the following questions:

1. Should this Court grant certiorari to review any of Bartel's claims where both the district court and the Second Circuit, applying traditional principles of state law, determined that all of those claims were barred by Bartel's settlement agreement and release?

2. Should this Court grant certiorari where the Second Circuit applied traditional principles of *res judicata* approved by this Court to reject all of petitioners' federal claims, and where there are no conflicts among the circuits or novel questions of law?

3. Should this Court grant certiorari where both the district court and the Second Circuit determined that petitioners had no substantive right to relocation expenses to which federal constitutional protections could attach?

4. Should this Court grant certiorari where, after presenting evidence and being given the opportunity to present even further evidence, petitioners could raise no colorable claim of unequal protection so as to survive summary judgment?

5. Should this Court grant certiorari where discretionary Rule 11 sanctions were imposed solely as to those claims found to be frivolous, and where there is no conflict among the circuits?

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BRIEF FOR RESPONDENTS SCHULTZ AND DORMITORY AUTHORITY IN OPPOSITION TO PETITION FOR CERTIORARI

This brief is submitted by respondents Peter J. Schultz and Dormitory Authority of the State of New York, in opposition to the petition for a writ of certiorari filed by Bartel Dental Book Co. Inc. and Mapleton House Books, Inc.

Statement of the Case

A. The Facts

Petitioners' recitation of the facts refers not once to the record on appeal and bears little resemblance to it. Accordingly, we review the record facts at some length.

Bartel and Mapleton are affiliated companies engaged in the business of buying and selling used books and periodicals (A-8, 310).* Mapleton leased space for its business at 112 Crown Street in Brooklyn. Until it was condemned, 112 Crown Street was owned by Bartel.

The Dormitory Authority is a public benefit corporation of the State of New York, and Schultz is its Deputy Executive Director (A-7, 9, 320). The Dormitory Authority's principal purpose is to promote higher education in New York by building and providing dormitories and other facilities for the benefit of state colleges and universities (A-57). Schultz directed the Dormitory Authority's efforts, through state condemnation proceedings, to acquire title to block 1294 in in Brooklyn for the construction of facilities for Medgar Evers College, a part of the City University of New York (A-9, 10).

The Dormitory Authority commenced condemnation proceedings in 1983. As part of that process, the Dormitory Authority negotiated with the various fee- and leaseholders, including petitioners, in an effort to reach agreed-upon values for their fee and fixture claims. Although no federal or state statute required it to extend any relocation

* References A- are to Joint Appendix on appeal.

benefits at all, the Dormitory Authority also negotiated with the occupants of the premises in order to reach agreement on the costs of relocating their premises.

These negotiations resulted in a settlement of all fee and fixture claims submitted in the condemnation proceeding (A-9).* Once those claims were withdrawn, the state court granted the Dormitory Authority title to the land in August, 1983.

With Mapleton, however, and only with Mapleton, the Dormitory Authority was unable to agree as to the reasonable cost of relocation. The Dormitory Authority offered $654,050—the amount for an "undocumented, self-move" recommended by one of its independent appraisers under the procedures used by the Dormitory Authority in negotiating relocation expenses with all of the condemnees on the Brooklyn site (A-66-67, 207-09). Mapleton, however, was unwilling to budge unless it received several times that amount (A-60-67). Faced with this intransigence, the Dor-

* Petitioners' statement of facts omits any mention of the agreement under which Bartel and Mapleton settled their fee and fixture claims during the condemnation proceedings (A-39-55). Pursuant to the settlement agreement, Bartel was compensated for the taking of its land, and it released the Dormitory Authority from "all claims made or which could have been made" in the condemnation proceeding (A-41). Mapleton was paid for its fixture claim and, in contrast to Bartel, expressly reserved its claim, if any, for relocation expenses (A-41-42, 43). The releases executed by Bartel and Mapleton also make clear that Bartel released the Dormitory Authority of all claims. Bartel executed a general release with no reservation whatsoever (A-55). Mapleton, on the other hand, expressly reserved its right later to assert "any claim for relocation costs" (A-54). In view of Bartel's settlement and release, the Second Circuit affirmed the district court's finding that Bartel's federal claims—which were all predicated on an asserted underlying right to relocation expenses—were patently frivolous. (*See* Appendix to Petition for Certiorari ("Pet. App."), at 5a, 6a.) Bartel does not seek review of this ruling.

mitory Authority was required to seek Mapleton's eviction so that construction on the site could go forward.

B. The State Court Proceedings

After the negotiations with Mapleton over relocation costs proved fruitless, the Dormitory Authority finally moved, in April of 1984, to seek Mapleton's eviction. Mapleton resisted vigorously.

On May 7, 1984, after considering the papers and hearing arguments from both sides, the Supreme Court of New York, Kings County, granted the Authority's application and ordered Mapleton to vacate the premises no later than May 10, 1984 (A-71-74).

Mapleton then embarked on a succession of motions to stay, motions to reargue, appeals and special proceedings, all with the aim of putting off the eviction. Those efforts began on May 10, 1984, when Mapleton moved to reargue the Supreme Court's order and for a stay pending reargument. In seeking reargument, Mapleton contended that any eviction prior to a "plenary hearing" on its claim for relocation expenses constituted a violation of its due process rights (A-81). The Supreme Court rejected the argument and denied Mapleton's motion on May 16 (A-90).

Meanwhile, Mapleton appealed the May 7 eviction order to New York's Appellate Division, Second Department (A-91-105), from which it sought another stay of eviction pending determination of the appeal. The Appellate Division granted a stay on June 4, 1984 but only "on condition that [Mapleton] remove from the premises in question on or before September 1, 1984 peremptorily" (A-106).

Faced with this latest delay, on July 3, the Dormitory Authority moved before the Appellate Division to vacate the temporary stay. In seeking to maintain the stay, Mapleton again raised its due process arguments under the Constitutions of both New York and the United States (A-103-04). Those arguments were rejected by the Appellate Division on July 27, when the stay was lifted and the order directing Mapleton to be removed involuntarily was restored (A-107). Mapleton was not about to give up, however. On September 12, 1984, it sought a temporary restraining order from the Appellate Division against the imminent eviction. The Appellate Division unanimously denied the application (A-36-37, 108-09).

The same day, the Sheriff of the City of New York began to remove Mapleton's books from the premises (A-16-17). Undaunted, Mapleton turned again to the Kings County Supreme Court, where it commenced an Article 78 proceeding and applied for a temporary restraining order against the removal already in progress. This application for a temporary restraining order also was denied (A-37, 120-21). Shortly thereafter, on September 21, 1984, the Supreme Court heard opposing counsel on the preliminary injunction sought by Mapleton (A-122-140). The injunction was denied, and Mapleton subsequently abandoned the Article 78 proceeding.

Once these remarkable efforts to remain in possession of its former premises had failed, Mapleton also lost interest in its appeal of the original eviction order. On March 14, 1985 the Dormitory Authority moved to dismiss the appeal for failure to perfect the appeal in a timely

fashion—over ten months. Despite Mapleton's opposition, on April 19, 1985, the Appellate Division granted the motion (A-147).

C. The Federal Complaint

In their federal action, petitioners alleged a potpourri of twelve causes of action against Schultz, the Dormitory Authority and the other defendants herein. Only the first, second and eighth of these, however, were alleged to arise under federal law; pendent jurisdiction was asserted as to the rest.

Plaintiffs' First Claim sought damages solely against Schultz, an officer of the Dormitory Authority. In essence, it alleged that Schultz was responsible for the negotiation of relocation "expenses," "benefits" and "claims" with the various occupants of the condemned site, but that Schultz took a "personal dislike" to plaintiffs' officers (A-10), and "wrongfully and maliciously refuse[d] to apply or give the same relocation benefits to plaintiffs as [the Dormitory Authority] did to other claimants" (A-11). Although petitioners alleged no discriminatory motive or effect, they claimed that Schultz's conduct constituted an unequal application of the law and thus was actionable under 42 U.S.C. § 1983.

The Second Claim was brought against both Schultz and the Dormitory Authority, again under Section 1983 and the Fourteenth Amendment (A-12-14, 15, 46-47). The thrust of the Second Claim was that petitioners were "denied due process of the law" by the failure to receive a "plenary" or "evidentiary" hearing on their claim to relocation expenses, prior to eviction (A-12, 14, 15-16).

The third federal claim, the Eighth Claim, averred that petitioners failed to receive "just compensation" for the relocation of their property as purportedly required by the Constitutions of the United States and the State of New York (A-24). The Eighth Claim did not assert that the Dormitory Authority "took" or "condemned" the books, but only that the petitioners suffered uncompensated damages as a consequence of the Authority's removal and subsequent storage of these items.

D. The Proceedings Below

Respondents moved before the district court to dismiss the complaint. In support of their motion, they submitted an affirmation and presented documentary evidence to the court detailing the course of the condemnation proceeding and the state court litigation (A-33-147). And the petitioners submitted an extensive affirmation, together with documentary evidence, as well (A-190-248). At oral argument, the district court advised petitioners that respondents' motion would be treated as one for summary judgment, and gave counsel the opportunity to submit further papers in opposition to the motion. Petitioners declined the offer. (A transcript of the oral argument is annexed to respondents' brief to the Second Circuit.)

On August 27, 1985, the district court granted summary judgment to defendants and imposed sanctions on plaintiffs and their counsel under Rule 11, Fed. R. Civ. P.

The court held, first, that all of Bartel's claims were frivolous in light of Bartel's settlement agreement and release (Pet. App. 15a). It then held that *all* of Mapleton's federal claims "were raised, or could have been raised, in the state court proceedings" and therefore were barred by

res judicata under *Migra* v. *Warren City School District Board of Education*, 465 U.S. 75 (1984), *Allen* v. *McCurry*, 449 U.S. 90 (1980), and a number of controlling authorities from and within the Second Circuit (Pet. App. 15a-17a).

The court did not, however, rely solely on *res judicata*. It went on to hold that petitioners were not denied due process because they had no federal or state constitutional or statutory right to relocation expenses to which procedural due process guarantees could attach (Pet. App. 18a). And, on the affidavits submitted by both sides, it ruled that plaintiffs' equal protection claim against Schultz could not survive the absence of any showing "that Schultz adopted different criteria" in offering relocation expenses to the various condemnees, including Mapleton (*id.*).

The court determined that all of plaintiffs' claims were frivolous, except for Mapleton's equal protection claim against Schultz. Thus, in imposing sanctions under Rule 11, the court denied respondents the recovery of those attorneys' fees incurred in the defense of Mapleton's first claim.

On March 12, 1986, the Second Circuit affirmed in a unanimous opinion. On the basis of the settlement agreement and release, it first ruled that "[t]he district court properly found Bartel's claims to be frivolous" (Pet. App. 5a). It also determined that the district court had properly applied New York's law of *res judicata*, as required under *Migra*, to bar the reassertion of Mapleton's federal claims in federal court. In so ruling, the Second Circuit reviewed the record and found that Mapleton had received a "full and fair opportunity" to litigate its federal claims in the numerous prior state court proceedings. (Pet. App. 6a-7a).

Although no more was required, the Second Circuit also upheld the alternative grounds for summary judgment set forth by the district court. Thus, it ruled that petitioners' due process claim could not survive the absence of any right, in either federal or state law, to relocation expenses in the context of a condemnation. Moreover, the Second Circuit noted, even if such a right existed, the record contained "ample proof" that Mapleton received the basic requirements of due process—notice and the opportunity to be heard on the issue of relocation expenses (Pet. App. 7a-8a & n.2). Petitioners' equal protection argument was also rejected—the Second Circuit found it "frivolous" (Pet. App. 8a).

The Second Circuit gave a ringing endorsement to the district court's discretionary award of attorneys' fees under Rule 11. Indeed, it held that the court "probably would have erred if it had *not* awarded attorneys' fees . . ." (Pet. App. 9a). Pursuant to its authority under Rule 38, Fed. R. App. P., the Second Circuit directed petitioners and their counsel to pay respondents double costs and attorneys' fees for having brought a thoroughly frivolous appeal.

For these petitioners, it is not enough that they were rebuked by the district court, and again by the Second Circuit, for consuming judicial resources on an action so utterly without merit. They would have the respondents —and this Court—address patently frivolous contentions yet a third time. But that is not the purpose of certiorari. There simply is no genuine or novel issue for this Court to review.

REASONS FOR DENYING CERTIORARI

I

The determination that all of Bartel's claims are barred by settlement and release presents no issue worthy of certiorari.

The district court found that petitioner Bartel's claims were frivolous because "Bartel executed a release and an agreement settling *all* its claims against the Authority" (Pet. App. 15a; emphasis added). Applying traditional principles of state contract law, the Second Circuit affirmed (Pet. App. 5a-6a).

Clearly, the determination that Bartel's settlement agreement and release was a bar to all of its claims poses no unsettled question of law, no conflict in the law of the circuits, and no legal issue of particular importance to future litigants. Indeed, even Bartel does not seek certiorari to review the lower courts' determination concerning the settlement agreement and release. Because this unchallenged ruling is fatal to every aspect of Bartel's claims, there is no reason for this Court to review any of the contentions raised by Bartel in its petition.

II

In affirming summary judgment, the Second Circuit applied the standard for claim preclusion adopted by this Court.

In *Migra* v. *Warren City School District Board of Education*, 465 U.S. 75, 85 (1984), this Court held that federal district courts hearing Section 1983 actions should apply the law of the forum state when deciding matters of claim preclusion. *See also Allen* v. *McCurry*, 449 U.S. 90 (1980). As the Second Circuit found, that is precisely what the district court did when it ruled that petitioners' federal claims were barred under New York's law of *res judicata* (Pet. App. 6a, 7a).

Petitioners do not assert, as they cannot, that this holding constitutes a departure from the jurisprudence of this Court, or that it conflicts with any rule adopted in other circuits. Rather, they contend that preclusive effect should not have been extended to the prior state litigation because Mapleton did not have a "full and fair opportunity" to litigate its federal claims in state court (Pet., at 12).

Yet, on the basis of the full record before it, the Second Circuit explicitly determined that Mapleton "had a 'full and fair opportunity' to litigate the claims brought here" (Pet. App. 7a n.1). Petitioners do not even attempt to suggest that this finding lacked support in the record. In fact, the record amply demonstrated that petitioners had their day in state court not only once, but in several proceedings.

Certiorari is not warranted to review this unremarkable, and plainly correct, determination.

III

Both courts below correctly determined that petitioners had no right to relocation expenses under federal or state law.

In holding that petitioners' rights to due process had not been violated, both courts below ruled that petitioners had no substantive right to relocation expenses to which the procedural protections of the Constitution could possibly attach (Pet. App. 7a-8a, 18a). Petitioners now assert that this conclusion was "contrary to well established law of this Court and the Constitution" (Pet., at 8).

Petitioners are wrong. In two unanimous opinions from which this Court has never deviated, it was held that consequential damages in general, and relocation expenses in particular, are not compensable under the Fifth Amendment where, as here, there has been a complete taking of the condemnee's property. *United States* v. *Westinghouse Electric & Mnf'g Co.*, 339 U.S. 261, 264 (1950); *Mitchell* v. *United States*, 267 U.S. 341, 344-45 (1925). And, to the extent that the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601, *et seq.*, now provides a *statutory* right to relocation benefits, it only applies, as petitioners concede, to federally-financed condemnation proceedings. (Pet., at 9). Petitioners do not assert that there was any federal role in *this* condemnation.

In their search for some substantive right to relocation expenses, petitioners also argue—for the *first* time in this action—that state law grants them such expenses under

Section 74-b of the New York State General Municipal Law (McKinney's Consolidated Laws of New York, West Publishing). There is no reason for this Court to grant certiorari to review such a frivolous contention. In their brief to the Second Circuit (at 23, 24, 27), petitioners repeatedly conceded that there is *no* New York statute that requires the Dormitory Authority to provide relocation expenses, and so the courts below held (Pet. App. 8a, 18a). The statute which petitioners appear to have suddenly discovered applies only to "municipal corporations" (Pet. App. 23a). The Dormitory Authority, on the other hand, is a public benefit corporation organized not under the laws of any municipality, but under the authority of the State of New York.

IV

In granting summary judgment on petitioners' equal protection claim, the court below followed the accepted and usual course of judicial proceedings.

As an independent basis for granting summary judgment to respondents on petitioners' equal protection claim, the district court held that petitioners had made no showing "that Schultz adopted different criteria in determining the amount [of relocation expenses] to be offered to Mapleton from the criteria used to establish offers to other claimants" (Pet. App. 18a).

On appeal to the Second Circuit, petitioners contended that the district court's ruling should have been reversed because Mapleton did not have the opportunity, through discovery, to adduce facts in support of the claim as de-

scribed in the complaint. The Second Circuit rejected this argument, holding that because petitioners failed to raise a "genuine issue as to any material fact, [the Dormitory Authority] was entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c)" (Pet. App. 8a).

In raising the same issue again before this Court, petitioners now assert certiorari should be granted because the decision of the district court to deny discovery was an "abuse of procedural due process" (Pet., at 11). Like so many of petitioners' arguments, this one also is frivolous.

First, there has never been a dispute as to what took place in the state court litigation that preceded the federal complaint. Thus, discovery was irrelevant to the district court's ruling that the equal protection claim was barred by *res judicata*.

Second, petitioners can blame only themselves for their failure to raise a genuine issue of fact sufficient to defeat summary judgment on the merits of their equal protection claim. When respondents submitted evidence in support of their motion to dismiss under Rule 12(b)(6), Fed. R. Civ. P., petitioners clearly anticipated that the motion might be treated as one for summary judgment, and therefore chose to submit extensive documentary evidence as well. At oral argument, the district court advised petitioners' counsel that respondents' motion would in fact be treated as one for summary judgment under Rule 56, Fed. R. Civ. P., and expressly offered petitioners the opportunity to submit even further submissions (*see* Respondents' Brief on Appeal, Appendix). Petitioners did not accept the offer, nor did they assert any need for discovery. Under these

circumstances, petitioners are ill-pressed to argue that their failure to raise any genuine issue of fact sufficient to survive summary judgment constituted a departure from accepted judicial norms.*

V

Certiorari is inappropriate to review the district court's sound exercise of discretion under Rule 11.

Exercising its discretionary power under Rule 11, Fed. R. Civ. P., the district court awarded respondents attorneys' fees expended by them in the defense of all claims except Mapleton's equal protection claim. In upholding the district court's exercise of discretion, the Second Circuit held (Pet. App. 9a):

> Mapleton's equal protection claim against Schultz was the only claim raised for the first time in its federal action. That claim was not supported by any legally relevant facts. Mapleton's other claims had already been rejected by the New York courts and were clearly

* Even on the face of the complaint, moreover, petitioners' equal protection claim was clearly defective as a matter of law. Assuming *arguendo* that petitioners had a substantive right to relocation benefits in the first instance, their interest in such expenses "has never been held to rise to the level of a fundamental constitutional right, so the 'close scrutiny' approach . . . is inappropriate here." *Cahill* v. *Cedar County, Iowa*, 367 F. Supp. 39, 42 (N.D. Iowa 1973) (footnote omitted), *aff'd*, 419 U.S. 806 (1974). Petitioners' complaint did not allege that others received relocation benefits and petitioners did not for some constitutionally impermissible reason (such as membership in a particular race or as a punishment for the exercise of constitutionally protected rights). *See, e.g., Bell* v. *Sellevold*, 713 F.2d 1396, 1401-02 (8th Cir. 1983), *cert. denied*, 464 U.S. 1070 (1984). Nor was there any allegation that respondents applied different criteria in performing clearly discretionary administrative action. In these circumstances, the Second Circuit correctly determined that the Dormitory Authority's action simply was not reviewable under the equal protection clause.

without merit. Furthermore, a competent attorney could not form a reasonable belief that any of these claims were "warranted by existing law or a good faith argument for extension, modification, or reversal of existing law." Fed. R. Civ. P. 11. *See also Eastway Construction Corp.* v. *City of New York,* 762 F.2d 243, 253-54 (2d. Cir. 1185).

Petitioners contend certiorari should be granted to review the district court's exercise of discretion on the ground that "if part of a complaint is non-frivolous or meritorious, Rule 11 sanctions are inappropriate" (Pet., at 6). Petitioners cite not a single authority for their peculiar construction of Rule 11. Rule 11 by its terms requires "the pleading" to be "well grounded"—not merely some portion of the pleading. A plaintiff should not be permitted to escape sanctions properly imposed for the bringing of numerous frivolous claims simply because one of its claims —although meritless—was found barely to rise above the level of frivolity. Contrary to petitioners' fear, no party who commences an action in good faith will be "chilled" by this decision, particularly since attorneys' fees were *not* awarded with respect to the one meritless claim found not to be entirely frivolous.

Petitioners further suggest that the Second Circuit's decision conflicts with the decision of the Fourth Circuit in *Nelson* v. *Piedmont Aviation, Inc.,* 750 F.2d 1234 (4th Cir. 1984), *cert. denied,* 105 S.Ct. 2358 (1985), and the decision of the Seventh Circuit in *Harry F. Chaddick Realty Inc.* v. *Maisel,* 762 F.2d 534 (7th Cir. 1985). No such conflict exists. In *Nelson,* the Fourth Circuit simply upheld the district court's discretion in not awarding sanctions

where the plaintiff's single claim rested on a non-frivolous statutory construction in a case of first impression. 750 F.2d at 1237-38. And in *Harry F. Chaddick*, the Seventh Circuit ruled merely that a district court did not abuse its discretion in denying defendants' Rule 11 motion where the first of plaintiff's claims "presented some very difficult problems" and the second claim was not found to be frivolous. 762 F.2d at 541-42.

The decision upheld by the Second Circuit was an award squarely within the discretionary authority of the trial court. That discretion, as the Second Circuit found, was exercised appropriately. There is no basis for consuming the resources of this Court on yet another review of the trial court's discretion.

Conclusion

Petitioners already have brought one frivolous action and one frivolous appeal. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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